



Mediation In International Parental Child Abduction

The reunite Mediation Pilot Scheme

by

reunite International Child Abduction Centre

Funded by The Nuffield Foundation

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reunite would like to thank all those parents who were willing to participate in this research project into the use of mediation in cases of international parental child abduction.

We would also like to thank members of the Mediation Steering Group for their time and expertise, and a special thank you goes to the mediators.

Finally, we would like to thank The Nuffield Foundation for providing the grant to enable us to undertake this research. Without this, the project would not have been possible and we thank you for believing in us.

International parental child abduction is not at first glance an obvious subject for mediation. The level of conflict is high, cultural differences can fuel misunderstanding and the involvement of two legal systems, and possibly two different languages, are complicating factors. Despite this, **reunite**, based on its broad practical experience of these cases, was one of the first organisations to recognise that in the now typical abduction case (*i.e.* abduction by the child's primary carer) there are strong incentives for the parents to find an agreed outcome. For a left behind parent who does not want primary care of the child, there is the prospect of a secure agreed visitation regime. For the taking parent there is the possibility that what originally was a unilateral and unwise act may be re-characterised as an agreed relocation. Most importantly, there is the prospect of limiting damage to the child by avoiding continuing conflict and a situation in which the child may become a shuttlecock between the two countries concerned.

One of the remarkable features of the Mediation Pilot Scheme is the symbiosis between it and return proceedings under the 1980 Hague Convention. Without the background of proceedings for prompt return of the child, the scheme probably could not work. It is a classic example of the advantages of bargaining "in the shadow of the law", in this case a law which carries a very clear message as to what will happen if agreement is not reached.

reunite is to be congratulated for the characteristically thorough preparation of the Mediation Pilot Scheme and for involving in the process from the earliest stages all the principal actors in Hague proceedings, in particular Judges, Central Authorities and legal practitioners. Similarly the evaluation of the project takes account of a variety of perspectives. One lesson, which the authors of the study have modestly not drawn is that, no matter how well devised is the structure, much in the end depends on the qualities and professionalism of the mediators. In this regard the success rates speak for themselves.

reunite and all who assisted with the Mediation Pilot Scheme, including in particular the Nuffield Foundation, which has in so many different ways supported the 1980 Hague Convention, should take pride in such a successful outcome.

William Duncan
Deputy Secretary General / Secrétaire général adjoint
Hague Conference on Private International Law /
Conférence de La Haye de droit international privé

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BACKGROUND

International parental child abduction is a prevalent phenomenon that has aroused the anxious interest of most national governments. It usually arises out of a complex and extreme breakdown in the relationship between parents. It frequently causes acute emotional distress to both parents involved and, most importantly, to the abducted children.

Governments from many nations have been co-operating to seek a consistent approach to discourage, and, as far as possible, undo the effect of, international parental abductions. Most such abduction cases coming before the courts of England and Wales are considered under the provisions of the 1980 Hague Convention on the Civil Aspects of International Child Abduction ('the Hague Convention'). The basic premise is humanitarian – that it is normally in the best interest of an internationally abducted child to be returned as quickly as possible to the country from which he or she has been taken.

In England and Wales all cases are tried by High Court Family Division judges and are heard in London. Applicant parents are entitled to mandatory legal aid to pursue the application for the return of the child, (irrespective of their means). Cases are normally resolved within six weeks, and, unless the abducting parent can show a technical failure to meet the Hague Convention criteria or unless the case comes within one of the strict defences, the application will result in an immediate return of the abducted child.

When the Hague Convention came into English law, it was expected that the majority of cases would be those in which parents have separated, and the parent with whom the children are not living snatches them and hides them, or refuses to send them back following an access visit. For such cases, the Hague Convention works well, and although mediation might allow scope for a voluntary arrangement, a speedy return is usually the inevitable and right answer.

However, it is estimated that 60 - 70% of Hague Convention applications involve children removed, or retained, by the primary carers, usually their mothers, but without the permission of, and in breach of the legal rights of, the other parent. In these cases a speedy return will also be the inevitable and right answer but there are other issues that have to be considered. As the Hague Convention does not distinguish between parents who are primary carers and those who are not, whatever the outcome of the application there

will be a further hearing on the merits of the case. The process causes emotional strain and disruption to the children and their parents, and falsely raises the hopes of the 'left behind' parent. The frequent result, following further dislocation, expense, heartache and litigation, is that the children and the primary carer, who originally abducted, are able, legally, to leave the country of habitual residence. However the very process of highly charged litigation and a physical return will often put paid to any prospect of an amicable resolution of the issues. At the same time the children concerned may suffer the trauma of at least three relocations in a short time.

In some of these cases the central issue for the 'left behind' parent is, in fact, contact or visitation and not necessarily a wish for a permanent return. The 'left behind' parent justifiably sees the removal or retention of the children as an attempt to "cut them out" of the children's lives. An application under the Hague Convention for the pre-emptory return of the child appears to be the only option open to them and the only way to secure adequate contact rights. Both parents are often reluctant to commence any form of negotiation, for fear of being seen as abandoning their respective positions.

If parents had the opportunity to consider all their options, with the assistance of mediators familiar with international children's cases, it is possible that a realistic practical solution could be achieved which would obviate the need for repeated moves and litigation.

An agreement between parents arrived at through mediation could:

- (1) avoid the cost to public funds of the Hague Convention proceedings, and the costs of proceedings in the other country – although a consent order would still be required;
- (2) avoid the stress of contentious litigation in two countries;
- (3) avoid the uplifting of the children from the requesting state to the home state, only for there to be a return later following disputed custody proceedings with all the attendant stress and further damage to the relationship between the parties;
- (4) avoid a substantial delay in resolving the future of the family in its totality;
- (5) obligate and empower parents to actively and purposefully address the issues affecting the future of their family.

If this result is achieved in even a small proportion of cases, the saving in human and financial terms would be significant.

It would also be consistent with the aspirations of the Hague Convention itself, which provides at Article 7 that:

'Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their respective States to secure the prompt return of children and to achieve the other objects of this Convention'

'In particular, either directly or through any intermediary, they shall take all appropriate measures-'

'(c) to secure the voluntary return of the child or to bring about an amicable resolution of the issues'

Mediation is now established as an important part of the progress of resolving domestic family disputes as an alternative to the battle of the court room. Despite the significant progress made in the role and recognition of mediation in a wide range of domestic disputes, it has not as yet been adopted for cases involving international parental child abduction. The reason such an approach has not been adopted to date is due to the particularly large number, and complexity, of barriers that need overcoming if mediation is to become a realistic option.

OBJECTIVES OF THE PROJECT

reunite secured funding from The Nuffield Foundation for a research project to develop and trial a Mediation Pilot Scheme for use in cases of international parental child abduction. The objectives of the project were:

- (1) to establish how mediation could work in legal conformity with the principles of the Hague Convention;
- (2) to develop a mediation structure that would fit in practically with the procedural structure of an English Hague Convention case;
- (3) test whether such a model would be effective in practice.

METHODOLOGY

We believed that it would be possible to construct a mediation model for Hague Convention cases that would be domestically and internationally safe, and acceptable and in legal conformity with the principles of the Hague Convention.

To achieve this, a mediation model and structure needed to be established, and a 'Step by Step' paper developed. When undertaking this development work a number of barriers needed to be overcome:

1. Safeguards

The Mediation Pilot Scheme had to be complimentary to a court application for a return and mediation was only embarked upon once an application for a return had been issued and had been heard on an initial hearing by the court. The court would place safeguards to ensure the child was not moved to another country or place of hiding.

In particular the design of the scheme had to be such that there was complete assurance that the mediation could not be construed as acquiescence taking the full cognizance of the decision of the House of Lords – H (Abduction: Acquiescence), Re. HL [1997] 1 872, FLR.

2. Legal Conformity

It was essential to establish how mediation could work in legal conformity with the principles of the Hague Convention and to ensure that a mediation structure was developed that would fit in practically with the procedural structure of an English Hague Convention case. A number of practical issues were explored and the scope of the Mediation Pilot Scheme was defined within a 'Step by Step' paper.

To ensure conformity with the “Step by Step” paper, written material was produced for parents, lawyers, mediators and Central Authorities, to outline how the Pilot Scheme would operate.

3. Timing

Hague Convention applications are treated as emergency business by the court, with a statutory objective of final resolution within 6 weeks of commencement. To mediate after a final hearing would be plainly too late, and delaying the Hague process in any substantial way would not be acceptable.

The mediation model was therefore devised so to run in parallel with the Hague proceedings and consequently any mediation was organised, effected, and concluded within this timeframe.

4. International Acceptability

It was of paramount importance that the UK's reputation as an enthusiastic and reliable upholder of the Hague Convention should not be undermined. It

was also envisaged that any mediation scheme would only work if overseas authorities and litigants had confidence in it.

The Central Authority for England and Wales was highly supportive of this project and was instrumental in promoting the Mediation Pilot Scheme by contacting the specialist family lawyers on the Child Abduction Referral List who represent applicant parents.

Whilst it was initially anticipated that we would need to partner with specified Central Authorities overseas to ensure that appropriate cases were identified for mediation, in practice, due to the Pilot Scheme being sufficiently promoted with the UK judiciary and legal practitioners, in the majority of cases where mediation was undertaken, these cases were directly referred to **reunite** without the involvement of a Central Authority.

5. Accessibility

It was recognised that the manner in which both parents were introduced to the Scheme was critical to its prospects of success.

Providing a 'left behind' parent a real incentive to look into the future and negotiate, without derogating from, or suggesting derogation from, his (or her) right to seek a return is a delicate exercise. In particular 'left behind' parents are often advised not to talk to, or negotiate with, the abducting parent about the future of their child in case the court interprets this as acquiescence, which is a specific defence to a return under the Hague Convention.

In the case of the 'left behind' parent, it was imperative that the parent did not feel that they were being 'talked out of' their right to pursue a Hague application for a return and it was also imperative that the parent was made aware that any mediation entered into would run in parallel with the Hague process.

In the case of the abducting parent, it was imperative that the parent did not feel that they were being 'talked out of' their right to defend the Hague application for a return and it was also imperative that the parent was made aware that any mediation entered into would run in parallel with the Hague process.

Parents were also informed that if mediation was not successful in resolving the issues relating to their children, they would be able to return to court to determine these issues. Participation in mediation would not in any way affect the parents' ability to ask the court to determine any issues, and the judge would not take into account the fact that mediation had been attempted. In addition, nothing said during the mediation could be quoted in court.

It was emphasised to both parents that mediation could only be undertaken with the full consent of both parents and an unwillingness to enter into mediation would not have an effect on the outcome of the Hague application.

6. **Expertise**

The mediation model was devised for co-mediation due to the complexity of cases of international parental child abduction and the required speed of the mediation process to conform with the timing of the Hague proceedings.

Due to **reunite's** expertise as the leading non-governmental organisation in the field of international parental child abduction, two members of **reunite** were identified to complete a training course with National Family Mediation. This training complimented their vast practical experience and knowledge of international child abduction and provided the **reunite** team with the skills necessary to undertake mediation.

In addition, a pool of mediators and lawyer-mediators with relevant expertise was established to assist the **reunite** team.

7. **Enforceability**

It was necessary to ensure that if a Memorandum of Understanding was reached during the mediation process, the court hearing the Hague application would accept it. This was achieved by ensuring that the Memorandum of Understanding was drawn up into a consent order and, where appropriate, registered in the overseas jurisdiction. Particular attention was paid to ensure the Memorandum of Understanding, and subsequent order, was sufficiently formed and sufficiently specific to avoid unnecessary future litigation.

It was emphasised during the mediation process that the Memorandum of Understanding could not be treated as:

- (a) a completed and binding agreement in child abduction proceedings;
or
- (b) disclosable in child abduction proceedings; or
- (c) constitute acquiescence pursuant to article 13 (a)

unless and until it had been submitted as a consent order in Hague proceedings.

MEDIATION MODEL

Mediation had to be undertaken in cases of international parental child abduction to test whether the mediation model was effective in practice. The stated aim of the project was to undertake mediation in 20 cases so to ensure that the mediation structure was fully tested and adequate feedback

obtained to draw meaningful conclusions and define future direction for the use of mediation in cases of international parental child abduction.

reunite undertook to mediate in cases where a child had been abducted to, or retained within, the United Kingdom, and where the applicant parent was pursuing a Hague application for the return of the child.

All costs associated with the mediation were funded from the grant awarded to **reunite** by The Nuffield Foundation. The applicant parent was provided with a return air ticket to the UK (with a limit of £300), hotel accommodation for a maximum of 5 days, and reimbursed for any additional travel and subsistence costs incurred whilst participating in mediation. The UK based defendant parent was reimbursed for all travel and subsistence costs incurred during the mediation process and provided with hotel accommodation where required. All mediators fees, interpreter fees, and administration charges were also covered by the grant.

Where cases were referred to **reunite** for mediation, the model outlined below was followed:

- 1) All referrals for mediation were initially screened by an administrator to determine whether or not the case met the criteria of the Mediation Pilot Scheme. Where the case met the criteria, information on the Pilot Scheme and Parent Questionnaires were provided to each parent via their solicitor.
- 2) On receipt of the parents' completed questionnaire, a mediator conducted an initial screening interview over the telephone with each parent. During this screening interview the mediator:
 - assessed whether or not the case was suitable for mediation;
 - identified whether or not both parents were willing to attend mediation with an open mind;
 - identified whether or not the child was at an age at which their voice should be heard;
 - discussed the mediation process and how mediation worked hand-in-hand with Hague proceedings.
- 3) If during the screening interview it was identified that the child was at an age at which their voice should be heard, the court was asked to direct that the child be interviewed by a Children And Family Court Advisory Support Service Officer (CAFCASS Officer) and a report filed with the court and provided to the parents and mediators.

- 4) The administrator contacted both parents to arrange appropriate dates for mediation and co-ordinated travel and accommodation arrangements.
- 5) Three mediation sessions were provided over a 2-day period. Each mediation session lasted a maximum of 3 hours.
- 6) Each mediation session was conducted with two independent mediators.
- 7) Where a parent requested the services of an interpreter, this was provided throughout the mediation sessions.
- 8) It was agreed that if during mediation a child protection issue arose, the mediation would cease and the appropriate child protection agencies would be contacted.
- 9) At any stage during the mediation, parents were free to consult their legal representatives, both in the UK and overseas, or any other individual they wished to consult.
- 10) Following a successful mediation, any agreement reached was set down in writing in the form of a Memorandum of Understanding (MOU). Parents were encouraged to seek advice on the MOU from their respective legal representatives, both in the UK and overseas.
- 11) Where necessary and appropriate, the lawyers in the UK reduced the mediated MOU to a consent order which was placed before the Family Division of the High Court in London.
- 12) The lawyer overseas was asked to register/mirror the consent order in the overseas jurisdiction.
- 13) If the mediation process failed, the Hague Convention application proceeded in the usual manner. No reference to mediation, or anything said within the mediation process, was admissible in the Hague proceedings, save for child protection issues (as discussed above) and any report prepared as to the child's objections to a return to the requesting State.

PRACTICAL TRIALS

A total of 80 cases were referred to **reunite** as potentially being suitable for mediation. In the main these cases were referred by one of the solicitors acting in the case, or in some cases referred by a Judge of the Family Division of the High Court in London, or identified through the **reunite** advice line.

Of the 80 referrals, 39 did not proceed to an initial screening interview. The reasons for this were as follows:

- In 18 cases one parent was not willing to mediate;
- In 5 cases an abduction had not taken place and the cases therefore did not meet the criteria of the Mediation Pilot Scheme (the parents wished to mediate on issues such as contact or leave to remove from the jurisdiction);
- In 3 cases the child was voluntarily returned to the country of habitual residence;
- In 3 cases nothing further was heard from the referring solicitor;
- In 2 cases the child's country of habitual residence was a non-Hague Convention country and therefore the cases did not meet the criteria of the Mediation Pilot Scheme;
- In 2 cases a return order had already been set down by the High Court and therefore the cases did not meet the criteria of the Mediation Pilot Scheme;
- In 2 cases the applicant parent's solicitor intimated that the parent did not have the funds to attend their final Hague hearing in London but would be willing to participate in mediation as a means of obtaining funding for travel and accommodation.
- In 1 case the child had been abducted to Turkey and the case therefore did not meet the criteria of the Mediation Pilot Scheme;
- In 1 case the applicant parent withdrew the Hague application and relocated to the UK;
- In 1 case the parents reconciled and returned to the child's country of habitual residence;
- In 1 case a Hague application had been refused and therefore the case did not meet the criteria of the Mediation Pilot Scheme.

Therefore 41 referrals proceeded to the first stage of the mediation process which was the initial screening interview to assess whether or not the case was suitable for mediation.

After undertaking the initial screening interviews, 5 cases were deemed not suitable for mediation, the reasons for this were as follows;

- In 2 cases the parents' views were too polarised with both parents indicating that they would not be willing to consider the other's point of view;
- In 1 case there were concerns about the alleged degree of violence and also concerns about the immigration status of the parents;
- In 1 case the mother did not feel able to be in the same room as her former partner and so could not participate in mediation;
- In 1 case the applicant parent advised that his aim was to relocate to the UK.

A total of 36 cases were accepted for mediation and arrangements were made for this to take place.

Unfortunately, in 8 cases, mediation was cancelled shortly before it was due to take place. The reasons for this were as follows:

- In 2 cases the applicant parent decided to withdraw the Hague application;
- In 2 cases the applicant parent withdrew from mediation stating that they did not believe the defendant parent would be "open minded" within mediation;
- In 1 case the parents were able to reach an agreement without the need for mediation;
- In 1 case it was not possible to obtain a flight for the applicant parent to ensure that mediation was undertaken prior to the final hearing;
- In 1 case the defendant parent decided not to mediate as the only date available coincided with her daughter's birthday and she was not prepared to mediate on that date.
- In 1 case the defendant parent withdrew from mediation (no reason was provided).

Although the stated aim of the project was to mediate in 20 cases, a total of 28 cases progressed to a concluded mediation; very brief details of the cases are set down below:

	Country Child Abducted From	Age of child (children)	Mother's Nationality	Father's Nationality	Memorandum of Understanding Agreed
1	Spain	8	British	British	Yes
2	Croatia	11 & 7	British	Croatian	No
3	Germany	1	Australian	British	No
4	France	10 & 8	French	French	Yes
5	Spain	2	British	Spanish	Yes
6	Ireland	11	British	Irish	Yes
7	Ireland	5	Irish	Irish	Yes
8	Germany	3	British	German	Yes
9	Malta	1	British	Maltese	No
10	Cyprus	12	British	British	Yes
11	Greece	2	British	British	No
12	Canada	3	Canadian	British	Yes
13	Spain	4	British	British	Yes
14	France	2	British	British	No
15	Ireland	13	British	Irish	Yes
16	Ecuador	5	Ecuadorian	British	No
17	Hungary	11	Hungarian	Hungarian	Yes
18	France	14, 10	British	British	Yes
19*	South Africa	10	South African	South African	Yes
20	France	13, 8	British	British	Yes
21	Australia	6	German	Australian	Yes
22	Netherlands	8, 6	Sudanese	Sudanese	Yes
23	Spain	5, 3	British	British	Yes
24	Norway	15, 14, 7	Somalian/Dutch	Somalian/Dutch	Yes
25*	New Zealand	15	New Zealander	New Zealander	No
26	Mexico	10, 8	Romanian/British	Indian/British	Yes
27	Poland	13	Polish	Polish	Yes
28	Turkey	14	Turkish	Turkish	Yes

* *In these two cases mediation was undertaken by telephone*

From the above it can be seen that a Memorandum of Understanding was agreed in 75% of all cases mediated.

Of the above 28 cases, in 61% both parents were of the same nationality although this was not an influencing factor in whether or not a parent was willing to participate in mediation.

EVALUATION OF THE MEDIATION PILOT SCHEME

To evaluate the success of the Mediation Pilot Scheme, all participating parents, acting solicitors, and mediators were asked to complete a questionnaire.

PARENTS EVALUATION OF THE MEDIATION PILOT SCHEME

From the 28 mediated cases it could be anticipated that 56 feedback questionnaires would be received, however, only 39 parents provided feedback which represents 70% of those parents who participated in mediation.

The feedback received is as follows:

Q1. How would you describe the overall administration of the mediation scheme?

Excellent 59% (23) Good 33% (13) Satisfactory 3% (1) Poor 5% (2)

"Excellent, I was very well looked after, thank you."

"Excellent, a small but extremely efficient team."

"Poor, there was no-one there to meet me when I arrived and my ex-husband and myself met by chance in the hallway outside the room we were using. On a more positive note, actual paper administration when he had agreed on a Memorandum of Understanding was impeccable and the administrative staff at **reunite** should be applauded in my opinion."

Q2. How would you describe the initial telephone interview undertaken with one of the mediators?

Very Helpful 58% (21) Helpful 33% (12) Satisfactory 3% (1) Poor 6% (2)

"Poor, there was not any initial telephone interview."*

"Poor, I didn't have one."*

** When reviewing the file, it was established that an initial telephone interview had been undertaken with these parents.*

Did it provide sufficient information?

Yes 91% (29) No 9% (3)

"Yes, as I didn't know what to expect from mediation, the information given helped me understand what **reunite** were trying to achieve."

"No, there was not any initial telephone interview."*

"No, I would have liked to have felt better prepared but this was soon done by the mediators within the first half an hour of mediation."

** When reviewing the file, it was established that an initial telephone interview had been undertaken with this parent.*

Did it address any concerns you may have had?

Yes 89% (32) No 11% (4)

"Yes, it did take away most concerns but couldn't completely as you have no idea what will happen. But they provided as much as was possible."

"No, I was open minded about **reunite**."

"No, I was very concerned that I was going to be bullied (either by my ex-partner or the mediators or both) - I wasn't at all by the mediators, they understood the position well."

Q3. How would you describe the information provided to you prior to the mediation process?

(2) Very Helpful 44% (17) Helpful 44% (17) Satisfactory 7% (3) Poor 5%

"Very helpful, the purpose of the objectives of the process were defined and explained very clearly. Even though I was not thinking about any mediation, it convinced me that it may help."

"Very helpful, I also appreciated the fact that advice was given to my ex-partner and that I was asked if I objected."

"Very helpful, from this information I thought it was a very good way to solve successfully the problem, so everything was very well explained, all the steps, until the final agreement was reached."

"Helpful, I read the bump provided by my ex-partner's solicitor but because it came from the other side I assumed the mediators were going to be biased (obviously I was still in shock and very paranoid). One chat with **reunite's** administrator was enough to calm me down though."

"Satisfactory, after 2 months of stagnation (seen from my point of view) everything went so quick that many questions remained open due to short notice - on the other hand, short notice was just what I wanted."

Q4. How would you describe the venue where the mediation was held?

Excellent 41% (16) Good 51% (20) Satisfactory 8% (3) Poor 0% (0)

Did you feel safe on arrival?

Yes 92% (36) No 8% (3)

Did you feel safe in the waiting area?

Yes 92% (36) No 8% (3)

Did you feel safe within the mediation process?

Yes 100% (39) No 0% (0)

Did you feel safe when leaving the premises?

Yes 92% (36) No 8% (3)

"To me, the venue was of no real relevance."

"Excellent, I was very impressed and pleased with the way the meetings, arrival, departure, and lunch break were organised. I felt very safe and supported and better able to cope with the impossible situation I was in."

"reunite put a lot of effort into making us feel comfortable. Thank you!"

"Yes, I didn't feel completely safe but not unsafe enough to answer no. The feelings only lasted until ten minutes into the mediation session."

"I felt safe within the mediation process and I feel that having the mediators present enabled my ex-husband and I to overcome our emotions and talk rationally about the welfare of our son."

"The overall attitude gave the immediate impression that everyone was neutral and all concerned would not take sides."

"At lunchtime, although my ex-husband had left the building ahead of me, as I left he was walking on the opposite side of the road, this made me feel slightly nervous."

"The reason why I have ticked no on two questions is not due to a **reunite** failing. My wife's family had travelled with her and this was unknown to **reunite** and myself until I had walked down to the mediation room and unexpectedly saw my wife's family. So this was a big shock to myself and the mediators on the day."

"I didn't feel safe on arrival as I had gone alone and I bumped into my ex-partner and his sister on the way."

Q5. Do you believe you were treated fairly during the mediation process?

Yes 90% (35) No 10% (4)

"No, I had limited time to speak versus my wife."

"No, I was in a much weaker, vulnerable position than my husband as the general attitude was that I would not have any chance at court. I felt pressured to accept my husband's demands in order to avoid court proceedings."

Q6. Do you believe you were treated with respect during the mediation process?

Yes 95% (37) No 5% (2)

"Yes, the two persons present behaved in a highly professional manner."

"Yes, one hundred percent."

"Yes, I was treated fairly and with respect at all times by the mediators, I did not always feel that myself and my ex-husband treated one another with respect."

"No, my passport was taken away during mediation."*

* *Solicitors asked for the passport to be removed on arrival as contact was due to take place immediately after mediation.*

Q7. What could the mediators have done better, if anything?

"I believe they have provided excellent support and advice and I do not think there was anything missing."

"They were good considering the circumstances."

"The mediators were well chosen."

"I was extremely satisfied with the mediators."

"I think everything during the mediation is good."

"Nothing, I found the whole process excellent and extremely professional."

"Everything was more than satisfactory, the only change I would make would be that the Memorandum of Understanding could be a little more defined with regards to contact/access of my child."

"Allowed me to finish my point and probably better if there was one male mediator."

"I think that a table to sit around would have been useful, both as a means to feeling safer (a mental feeling more than an actual barrier) and useful for note taking."

Q8. Would mediation have been improved by having mediators of both sexes present?

Yes 18% (7) No 45% (17) Not Applicable 34% (13) Possibly 3% (1)

"No, both were trained mediators which is the only issue."

"No, I felt that both of the ladies had a feeling how a man thinks."

"No, I have ticked "No" because I felt the mediators understood the emotion behind the situation. However, the idea of both sex mediators may help the female parent see a male parent's attachment and feeling toward the children and vice versa."

"Yes, although it depends on the personality of the mediator."

"Yes, maybe a male presence would have helped as my husband is chauvinistic."

"Yes, even though it might not be so, the presence of a male would have relaxed me more."

"Yes, my husband can be very charming in order to get what he wants. In real life he is a very immature man. A male mediator would have focused solely on the facts."

"Not applicable, I don't think having a mediator of the male sex would have helped. On the contrary, having females as mediators is an advantage as the child's interests should be paramount. As women have the motherly instincts it is better."

Q9. Was 3 hours a long enough time period for each mediation session?

Yes 82% (32) Not long enough 15% (6) Too long 3% (1)

"Yes, longer than 3 hours would have been too long - even quick decisions need thinking and sleeping over."

"Yes, being allowed to leave at any time was a huge help, ie the toilet, cigarette, coffee breaks, this eased the overall atmosphere."

"Yes, the mediators gave ample opportunity to stop if required."

"Yes, ideal, no pressure to finish too early or late."

"Not long enough but it depends on the situation. In our case, sessions were too short because there was too much general discussion - also my wife spoke too much so we barely started getting anywhere before the session was over."

"Not long enough, it could have been an extra hour."

Q10. Did you have your own separate time with the mediators during mediation?

Yes 90% (35) No 10% (4)

"Yes, this was excellent as I was able to ask questions regarding issues if needed. The mediators were able to listen to aspects of the case that were relevant but not thought of before."

"Yes, it was beneficial."

"Yes, it was very necessary from time to time to speak separately."

"Yes, the mediators were open to suggestions and requests from all sides, to discuss separately at all times, which was very good and useful for the objectives of the process."

"Yes, can I say that possibly one might want to understand the underlying characters and search for a possible place for mediation."

"Yes, but not long enough."

If no, would you have wanted to?

Yes 75% (3) No 25% (1)

"Yes, to explain very clearly what I wanted."

"Yes, my suggestion is each party spends 30 minutes giving the background of the case in their words to the mediators in advance."

"No, I thought this would have been essential prior to mediation but in hindsight it was much better as I didn't feel as though either of the mediators was on anyone's particular side."

Q11. Did the mediation process meet your expectations?

Yes 90% (35) No 10% (4)

"Yes, because of the very professional behaviour of the mediators we were able to achieve an acceptable agreement by the end of mediation."

"Yes, on the whole, the process turned out to be better than my expectations."

"Yes, it was much more helpful than I thought it would be."

"Yes, it made me feel as though, even if my ex-partner didn't agree to the outcome of mediation, I had never been unreasonable in allowing contact etc. Also, he agreed to us residing in the UK almost immediately."

"No, it should be more directed to the key points/resolution, it was too general."

"No, I was clearly disadvantaged in the mediation process. However, I appreciate that we were given the opportunity to find solutions outside the courtroom."

Q12. Did the mediation process focus on the needs of your child/ren?

Yes 92% (33) No 3% (1) Unsure 5% (2)

"Yes, I felt that my daughter was the most important in this case."

"Yes, in fact it entirely focussed on the needs of my child."

"Yes, and the needs of the parents for the children."

"Yes, the mediators did an excellent job on keeping the focus on the child."

"Yes, but it could have focused on the real needs of the children."

"Yes, but it also focussed on my needs. I thought this was very perceptive of the mediators (thank you)."

"No, this wasn't possible due to dad's intentions with myself."

Q13. How helpful was mediation in resolving the dispute about the child/ren?

Very helpful 54% (20) Helpful 32% (12) Not helpful 3% (1) Unhelpful 11% (4)

"Very helpful, staff were very helpful and understanding."

"Helpful, this did not work for us but ordinarily I would say that it would work for many couples."

"Helpful, I think that the mediators saw that most of the 'dispute' was not about the child but about me and about how my ex-partner was making as much of a nuisance of himself as possible via our son."

"Unhelpful but only due to the mother changing her mind again afterwards. The official result was very helpful as such, the factual result was not."

"Unhelpful, not to do with the mediators but I had reservations about whether it would work."

Q14. How helpful was the mediation in reducing the conflict between yourself and the other parent?

Very helpful 56% (20) Helpful 28% (10) Not helpful 8% (3) Unhelpful 8% (3)

"Very helpful, as my ex partner is unpredictable and I hadn't seen him since September, I was worried about further conflict. I didn't want this and the prospect of more upset concerned me initially."

"Very helpful, now it looks like it has solved any issues. I hope this continues as it is early days."

"Very helpful, the mediators kept the discussion on track and defused any conflict that occurred."

"Helpful if both parents understand the issue."

"Helpful, we have started to talk about the problems."

"Helpful, the very fact that we entered a room with two people present who were unbiased helped my husband and I to communicate and diffused a lot of animosity between us. The fact that those two people were skilled, experienced and compassionate towards our situation only helped matters further."

"Helpful, it was good to at least have contact in person with the other party rather than it being through lawyers."

"Not at all helpful, it was about our daughter and more background should have been involved more. It seemed one sided to my husband."

"Not at all helpful, due to the circumstances behind the conflict, the mediation would/could not have reduced this."

"Not at all helpful, again not the fault of the mediators but some things discussed caused further irritation to my partner."

"Not at all helpful, there was absolutely no conflict before the surprise Hague application."

"Unhelpful because of solicitors"

"Unhelpful but only due to the mother changing her mind again afterwards."

"The conflict between myself and my husband is too complex that it could be reduced in a few sessions. I personally had no expectations regarding this matter. All my focus was on achieving the best possible outcome for our son."

Q15. How helpful was the mediation process in improving communication between you and the other parent?

Very helpful 46% (17) Helpful 38% (14) Not helpful 11% (4) Unhelpful 5% (2)

"Very helpful, as since May I had not been able to communicate with my ex-partner on a rational basis. I hope now communication will improve concerning our son."

"Very helpful, we had not spoken in over 14 months."

"Very helpful, without mediators we could not talk at all for a long time before."

"Helpful, the presence of a third party forbids foul language, walking off etc."

"Helpful, they have greatly improved the communication between myself and my wife, especially given the short time spent with us."

"Helpful, it helps to break down barriers."

"Helpful, it helped me realise not to communicate too much with the other parent."

"Not at all helpful but not because of the mediation, solely because of my ex-wife."

"Not at all helpful, we are in the same position as before but I can see that this idea is very much in the right direction."

"Not at all helpful, but this does not originate from the mediation process but the personality and habits of the other parent. Enough effort was shown to improve it."

"Not at all helpful, mediation raised further issues which resulted in arguments following the session and therefore some strain in communication."

"Unhelpful because of solicitors"

Q16. How helpful was the mediation process overall?

Very helpful 67% (25) Helpful 30% (11) Not helpful 3% (1) Unhelpful 0 (0%)

"Very helpful, we reached an agreement. More than this cannot be achieved by a mediation. If 99 mediations finish without an agreement and only 1 succeeds, I think it is worthwhile to mediate."

"Very helpful, hopefully the lawyers don't disrupt the results from mediation and we stick to the agreement. I feel that the least amount of involvement with lawyers the better. The mediators are more realistic, decrease conflict, improve communication and appear to obtain better results."

"Very helpful, it stopped an awful situation for both me and my children from being forced upon us."

"Very helpful, the mediation made my daughter happy, I think also me and my husband."

"Very helpful, it was indispensable - both as an exercise to discover what each parent actually wants (which in our case was that neither of us wanted a return) and to hear independent professional mediators calmly and diplomatically saying why or why not each parent's ideas were not practical. It made me feel as though there was hope in my case and as though I had a voice and as though the contact which I had already been giving was very accommodating. Thank you very much."

"Helpful, even though the situation turned out to be only short-lived, much of what has been said would most likely not have been said otherwise."

"Helpful, that both parents had to listen to possibilities and discuss."

"Helpful, given the time available, mediators need to be more directive in getting to the point quicker, the mediators should be more assertive."

"Helpful, I would like to take this opportunity to thank **reunite** and its mediators for your assistance in this very difficult time."

"I can not comment on this as I feel it is something that will be proved or disproved in the future, we both entered mediation with an aim to retaining care of the children."

Q17. How satisfied are you with the outcome of mediation?

Highly satisfied 43% (16) Satisfied 43% (16) Dissatisfied 14% (5)

"Highly satisfied because it is a good concept and will achieve results (one to one pre-briefing might help), ie putting across the idea."

"Highly satisfied, alas I do not know if we will reach the goals and the objectives because of the old habits my son and the other parent have developed. Time will show."

"Highly satisfied, although it is not exactly what I want to be doing with my life, my children are number one and their needs are being addressed to some extent."

"Between highly satisfied and satisfied. The ultimate result for me was not achieved, that of my son returning to Australia, but this is what mediation is about. I am happy with the end result as I have an acceptable outcome which could be better than if I went to court. Hopefully it also creates a less stressful environment for my son."

"Satisfied, the two lady mediators were absolutely superb. I did have a problem with the outcome due to the fact that my ex-husband has asked a lot regarding the children and I felt very pressured in agreeing due to the fact that I am desperate to stay in our country instead of wandering off to a foreign country."

"Satisfied, obviously, on a selfish note, the less contact the better but on a practical level I would have been very, very relieved if my ex-partner had accepted the outcome of mediation in January, instead of putting me through months of negotiations, only to come out with virtually the same deal. It gave me a strong idea of what to come back to (the Memorandum of Understanding) when turning down negotiations from him."

"Dissatisfied, however through no fault of the mediators."

"Dissatisfied, however this is not the fault of the mediators, it was the circumstances of the case and they tried to help with the best of a bad situation."

"Dissatisfied because I would have liked it to have worked."

"Dissatisfied, one of the goals of the mediation process is to improve communication between parents, this didn't happen at all. Besides, the final proposal did not reflect the things I was telling to my translator."

"Whilst we have come to an agreement about contact for the children, I do not think my ex-husband will abide by it, no matter what the outcome of the hearing."

Q18. Overall how would you describe the reunite Mediation Pilot Scheme?

Excellent 69% (27) Good 28% (11) Satisfactory 3% (1) Poor 0 (0%)

"Excellent, I believe that this type of service should become the norm and that lawyers and courts should become a last resort."

"Excellent, it avoids a courtroom battle, which in this type of situation only gets you to a no win situation."

"Excellent, highly impressed."

"Excellent, it was the first time I could feel that my child is in the first place in this case."

"Excellent, this is such a good idea I have promoted it through the court for future referral of other couples."

"Excellent, I think it is especially useful as you can see the reality clearer. I also think involving children in the process helps because they can see the truth better, no matter how old they are, provided the parents behave in a fair and civil manner."

"Good, as long as it is seen as an extra chance and not as a remedy, it can work. Mediation with mediators from both sides and both sexes was very essential to me."

Q19. Would you consider using mediation again?

Yes 87% (34) No 3% (1) Maybe 10% (4)

"Yes, I would prefer to use mediation over anything else, I believe it is far more effective."

"Yes, but not for any of my future problems as I feel my partner did not understand the relevance to dual parenting."

"Yes, there is nothing to lose in doing so."

"Maybe but not with the same partner - with another one I shall hopefully not have to do this again."

"Maybe, I don't think I will be frightened next time my ex-partner brings any court action on me and he will never have the threat of getting us returned to Spain. However, it would probably be very useful but I would want to manage independently."

"Yes, but only with mediators of both sexes present."

Q20. Would you recommend mediation to others?

Yes 95% (37) No 2.5% (1) Maybe 2.5% (1)

"Yes, to save pain and anguish."

"Yes, I feel that it can be far more effective and less stressful than dealing with lawyers and courts. I would recommend mediation, in appropriate cases, over lawyers and courts to everyone"

"Yes, I have made a statement to the court that this is the future of disputes within a family."

"Yes, because each conflict has its own individual content and circumstances."

"Yes, I met very kind and professional mediators."

"Yes but it is dependent on the personalities involved."

"Yes, again there is nothing to lose - the scheme was professionally conducted."

"Yes, it just made me feel heard and as though I had a clearer idea of what was reasonable and what was not. (And made me feel as though I had a strong defence.)"

"Maybe but it depends on the individual person and character."

Q21. How do you feel the mediation process could be improved?

"If parents knew about it maybe they could start it before starting a court case and saving a lot of suffering and stress, especially for the children."

"it should be compulsory prior to a parent issuing the Hague. This may be difficult to introduce but it is not impossible. It would save much heartache, worry, money, lawyers time, taxpayers money, court time, Judges time, and Barristers time."

"By making it obligatory - the sheer use of it as "a sign of goodwill" (even if the mind is made up already) could then be stopped."

"The mediation process I experienced over the last 2 days has been excellent and I don't believe it requires improvement."

"Having the interviews with parents and children a little earlier than the mediation to give them more time to think and prepare for the mediation."

"More knowledge should be gained about the respective personalities, anxieties challenged and discussed, and eventually a way through found."

"It would be helpful to have a group of some professional interpreters working with **reunite**."

"I don't feel the process could have been improved."

"More time for each session."

"A male and a female mediator."

"Provide a little more information prior to the meeting as to what one is to expect."

"With longer breaks."

"No improvement is needed as the situation (mediation) felt safe and secure."

"Perhaps a joint scheme of mediating the parents problems (Relate type mediation) in conjunction with **reunite** may help to achieve resolution of the dispute. It is the parents who need to be told where they have gone wrong that will assist with resolving the issue of the child."

"There should be allowance for more time for complicated cases."

"More focus, direction and assertion from the mediators."

"The only problem is the fact that things are not followed up, that is making sure each party sticks to what is discussed."

"I didn't like being "ordered" to go to mediation. I was very aloof the first time the administrator phoned me because I didn't realise the set up was so unbiased. I don't know how this could be done differently though. As the defendant it all comes as a bit of a shock at first, the summons, mediation stuff..."

Q22. Please provide any additional information/comments that you think would assist reunite in evaluating the Mediation Pilot Scheme.

"**reunite** has an excellent concept. A human face to an ugly situation, putting children in the question and their needs."

"It is a good idea as it sorted out the welfare of our daughter."

"I don't think it is used enough or advertised enough and that it should be made more readily available. There would be far less stress and conflict if there were more mediators. Lawyers should be made to offer mediation up-front."

"I think the mediation was a good result for both of us. Previous offers of access to my ex-partner by my solicitor were refused by him but now a framework has been put together I hope life will resume with some sense of normality so I can continue to provide care and stability for our son whilst his father assumes a good contact package."

"I think that the mediation process should be made compulsory for anyone involved in the Hague return. It should be placed much earlier in the return process. Immediately after a parent applies for a return, the passports should be lodged with the courts, and both parents should be put into mediation. If this is not offered, the Hague only damages families and children, financially and emotionally. It wastes taxpayers money, court time, judges, solicitors and barrister time. It causes heartache and worry for extended family and friends. Everyone involved risks an awful lot. The Hague is supposed to protect children, mediation may make this possible. The Hague only destroys children. The Hague is not made clear to people moving abroad with families. I have read numerous books and searched websites, and now I know what I am looking for I have searched consulate websites. There is nothing to tell me that I am entering into this law and that I can't leave without this hanging over me."

"To spread the scheme so that it is available to people near their residence."

"The attention on the child was number one. However a bit more attention on the couple could assist the couple more and hence the child."

"Mediation needs some sort of training for the parties involved. I think a short training can be given over the phone to parties who have never been in mediation."

"I would like to say again thank you to everybody who I met during mediation. It was done very professionally, with success and was free."

SOLICITORS EVALUATION OF THE MEDIATION PILOT SCHEME

Feedback from solicitors representing the applicant parent:

From the 28 mediated cases it could be anticipated that 28 feedback questionnaires would be received, however, only 15 solicitors provided feedback which represents 53.5% of those solicitors whose clients participated in mediation.

Q1. Why did you put this particular case forward for mediation?

"The other side wanted to mediate."

"It seemed as though this was more of a 'contact' issue."

"Both parents indicated a wish to mediate (in 3 cases)."

"The client (father) was willing to mediate and I perceived that it was a 'contact' case."

"The mother requested it and the father did not object."

"Given the ages of the children and the defence of objections it was hoped that mediation could inform the parents."

"The client agreed given the child's objections."

"It seemed a case where mediation might work."

"**reunite** contacted us, possibly at the suggestion of the mother's solicitor."

"The mother came over to the UK from Ecuador and the parties were able to speak to each other sensibly."

"The client had come over to England and I took on this case from a previous firm - it had been acrimonious."

"The client was willing to mediate."

"The client was receptive to mediation and the child was very young."

Q2. Where a Memorandum Of Understanding (MOU) was reached, was it made into a Consent Order?

Yes 67% (8) No 33% (4)

NB An MOU was not reached in 3 of these cases

"No, the parties agreed only that the mother would not proceed in enforcement due to the child's objections."

"No, the parties could not agree final terms save for a withdrawal of the mother's summons."

"No, our client believed an agreement had been reached but the mother changed her mind. The final order at court however reflected the mediated agreement."

"No, the parties agreed what would happen if the child stayed in England or returned to South Africa. The Memorandum of Understanding was reached at the same time as a CAFCASS report was prepared as to the wishes and feelings of the child. The client said if the child wanted to stay in England she would abide by her wishes (MOU). However the CAFCASS report said whilst the child said she wanted to remain in England, her answers were stilted and rehearsed. The client was not willing to stand by the MOU and the child was returned to South Africa."

Q3. Did you modify the MOU prior to it being made into a Consent Order?

Yes 38% (3) No 62% (5)

"Yes, the Order was varied by counsel for both parties to ensure the provisions were acceptable/enforceable in Canada."

"Yes, the timings of contact were modified."

"Yes, to provide for the position should mother return to Ireland."

Q4. As a specialist solicitor, and after using the reunite Mediation Pilot Scheme, would mediation be an avenue that you would use prior to, or as an alternative to, court proceedings?

Yes 100% (15) No 0% (0)

"It depends on the case but mediation can be useful if parents want to try to reach an amicable solution to the problem."

"Where possible we always consider mediation."

"In appropriate circumstances and where the issues are such that parental input would assist the Court and the parties."

"There is more satisfaction if it works but decisions must be taken on the basis of the individual circumstances of each case."

"The client (father) was very pleased with the mediation. He found it very helpful and with really skilful mediators."

Q5. How many hours did you allocate to your client in support of the mediation process?

- 5 hours - 2 cases
- 4 hours - 3 cases
- 3 hours - 4 cases
- 2 hours - 3 cases
- 1 hour -1 case
- Impossible to quantify - 1 case
- Did not indicate - 1 case

Q6. What costs were incurred in supporting the mediation process?

- £600 - 1 case
- £500 - 3 cases
- £400 - 1 case
- £300 -1 case
- £250 - 1 case
- £200 - 1 case
- £150 - 2 cases
- £100 - 1 case
- No cost - 2 cases
- Impossible to quantify - 1 case
- Did not indicate -1 case

Q7. Was the final hearing delayed due to the mediation process?

Yes 27% (4) No 73% (11)

"Yes, 3 weeks." (this delay was due to the father being unable to get a flight from New Zealand until after the Christmas break)."

"Yes, 3 weeks." (the parents only decided to mediate 7 days prior to the date of the final hearing)."

"Yes, approximately 4 weeks." (this delay was due to the father having to apply for a passport to enable him to travel to the UK)

"Yes, approximately 4 weeks." (this delay was due to mother's difficulty in getting a flight from Ecuador to the UK)

Q8. Would you like to see mediation be offered as good practice in cases of international parental child abduction?

Yes 100% (15) No 0% (0)

"It is always in the child's interests for the parents to be able to reach an agreement than for a court to force a decision on the family."

"Provided that it is part of a Court endorsed process and provided by an accredited body."

"There is more satisfaction if it works but decisions must be taken on the basis of the individual characteristics of each case."

"Many cases are capable of settlement."

"Good practice, yes, but not always appropriate in every case pre-issue of proceedings."

Q9. How do you believe the mediation process could be improved?

"Be available in all cases where the parents are agreeable."

"To be more widely available."

"I think in some cases the client's contact is over optimistic/complex."

Q10. Do you have any further feedback or feedback on behalf of your client?

"The client (father) was very pleased. Mediation resolved a very difficult case where there were existing financial proceedings in Hungary which were clouding the issue."

"The client (father) was very pleased with the outcome of mediation and the Memorandum of Understanding."

"The client feels his wife attended mediation then after getting the Memorandum of Understanding pointed out there was no chance of a reconciliation."

"My client was very grateful to have had the opportunity of trying mediation."

"Although the parents did not agree in mediation, it did get the ball rolling and this case did resolve itself by an Order made by consent after extensive negotiations at Court."

"The client was pleased with mediation but has indicated some of the points agreed in mediation have not subsequently been abided by."

"I believe the contact arrangements agreed were too detailed. I am aware (although I was not involved) that the mother took this back to court to vary the contact arrangements. She claimed my client did not stick to the arrangements."

Feedback from solicitors representing the defendant parent:

From the 28 mediated cases it could be anticipated that 28 feedback questionnaires would be received, however, only 10 solicitors provided feedback which represents 35.7% of those solicitors whose clients participated in mediation.

Q1. Why did you put this particular case forward for mediation?

"The solicitor for the child requested mediation as did the solicitor for the father."

"I cannot recall how the proposal for mediation arose. I believe the client may have already contacted **reunite** before instructing us."

"It was automatically referred as we were on the receiving end of the proceedings."

"The parties both indicated that they saw the case as essentially about contact."

"It was agreed between the parties at court that mediation was the best way forward."

"On the recommendation of counsel instructed in proceedings under the Child Abduction and Custody Act 1985."

"The other side did."

"The parties were in discussions and it seemed that matters could be resolved with some additional input."

Q2. Was the Memorandum Of Understanding (MOU) made into a Consent Order?

Yes 86% (6) No 14% (1)

NB An MOU was not reached in 3 cases

"No, our client changed his mind on the contact arrangements within the MOU"

Q3. Did you modify the MOU prior to it being made into a Consent Order?

Yes 50% (3) No 50% (3)

"Yes, minor modifications to reflect practical arrangements."

"Yes, I believe things were added but on the whole it was followed."

"Yes, generally dealing with travel arrangements, who could be present during contact and the duration of contact itself."

Q4. As a specialist solicitor, and after using the reunite Mediation Pilot Scheme, would mediation be an avenue that you would use prior to, or as an alternative to, court proceedings?

Yes 100% (10) No 0% (0)

"Mediation can be valuable in all aspects of family work, ultimately it is the client's own choice whether or not to attend having received the advice and information from us."

"It assisted in reaching an agreement which I do not believe would have been reached in 'traditional' negotiations."

"In this particular case mediation was very helpful. I always try to encourage parties to attend mediation as an alternative to court proceedings."

"I think it was helpful and made significant headway to resolving matters."

"In appropriate circumstances and where the issues are such that parental input would assist the Court and the parties."

Q5. How many hours did you allocate to your client in support of the mediation process?

- 7 hours - 1 case
- 5 hours - 1 case
- 4 hours - 1 case
- 3 hours - 1 case
- 2 hours - 2 cases
- 1 1/2 hours - 1 case
- 1 hour - 1 case
- I don't recall - 2 cases

Q6. What costs were incurred in supporting the mediation process?

- £750 - 1 case
- £450 - 1 case
- £350 - 1 case
- £200 - 1 case
- £150 - 1 case
- £100 - 1 case
- £50 - 1 case
- I believe there were none - 1 case
- Not known and the file is unavailable now - 1 case
- I don't recall - 1 case

Q7. Was the final hearing delayed due to the mediation process?

Yes 10% (1) No 90% (9)

"Yes, approximately 4 weeks." (this delay was due to the father having to apply for a passport to would enable him to travel to the UK)."

Q8. Would you like to see mediation be offered as good practice in cases of international parental child abduction?

Yes 100% (10) No 0% (0)

"Provided that it is part of a Court endorsed process and provided by an accredited body."

"Subject to the parties being willing to attend and retaining control over their decision for this."

"It will help obtain realistic solutions."

"It is far better for the parties to sit down together as the parents of the child to resolve matters than having acrimonious court proceedings."

"I do think it helped focus minds about what was at stake and removed some of the issues between the parties."

Q9. How do you believe the mediation process could be improved?

"To be more widely available."

"In this case it all went very smoothly so I couldn't see anything that needs changing."

"None."

"I have only used the service once and I was very impressed."

"I think it worked successfully. I am not sure what improvements as it all happened quickly etc and this has been the only case I have referred."

Q10. Do you have any further feedback or feedback on behalf of your client?

"I think the scheme has potential to be very helpful and resolve a lot of cases."

"I am aware that my client was greatly assisted by the support and advice that was given to her by **reunite** during this difficult time and was grateful for this."

"My client was very vulnerable, the victim of domestic violence. Although the feedback from mediation was that it was dealt with sensitively she eventually agreed to hand the child back to the father which rang alarm bells that the opponent had 'got at' her. However, staff reassured us that it was her choice and the parties even went to lunch together etc."

MEDIATORS EVALUATION OF THE MEDIATION PILOT SCHEME

A total of 8 specialist mediators undertook mediation in the 28 cases. Of these, 6 mediators provided feedback which represents 75% of those mediators who participated in the Mediation Pilot Scheme.

Q1. Are you a mediator with a specialist family law background?

Yes 50% (3)

No 50% (3)

Q2. If you are a mediator without a legal qualification what knowledge base and expertise do you have in the field of international parental child abduction?

"I chaired the All Party Parliamentary Working Party Sub-Committee on child abduction and mediation and prepared its reports."

"I have in-depth knowledge and expertise in the field of international parental child abduction through working with **reunite** over a period of 12 years and through direct contact with parents who have contacted the **reunite** advice line."

"I have worked with **reunite** since 1989 and then became Director in 1993. I have 16 years experience of working on the **reunite** advice line, as well as working on policy and the development of **reunite**."

Q3. Would you have been able to undertake mediation in this type of case without any prior knowledge of international parental child abduction and the 1980 Hague Convention?

Yes 0% (0)

No 100% (6)

"The legal framework of these cases differs from ordinary custody cases, the time and the results of a court decree are very different."

"You need to have a pretty good idea of how the courts would approach a case. Is it a wrongful removal by a non-residential parent, or one where a properly constituted application for permission to relocate is likely to succeed?"

"Knowledge of and experience in the field of child abduction is essential. I do not think being a lawyer is essential though it has advantages if there is child abduction expertise."

"Knowledge of international parental child abduction and the Hague Convention is vital as without this I would not have understood the practicalities or repercussions on the family following a court ordered Hague return or successful court application to remove or remain."

"You must understand the 1980 Hague Convention, how other member States operate, have an understanding of their legal system (domestic) as well as how they implement the Convention."

"Although I have been qualified as a solicitor for 37 years (specialising in family law) and have been practising as a mediator for 20 years, I do not regularly deal with child abduction and consequently feel much more comfortable operating with a co-mediator (albeit not legally qualified) who has direct regular experience with abduction cases."

Q4. Do you believe this type of mediation should only be undertaken by a mediator with a specialist family law background?

Yes 50% (3) No 50% (3)

"Whilst knowledge and experience of child abduction is vital, it is not necessary for the mediators to have a specialist family law background as both parents have legal advisors on hand and the mediators have access to legal advice. However, the mediators must have an understanding of the laws surrounding the issue and also an awareness of the domestic laws relating to residency, custody and contact in the UK and also the country of habitual residence."

"Knowledge and experience of the area of child abduction is essential - my view is that you do not need to be a mediator with a specialist family law background although there is need for that specialist legal expertise (in child abduction law) to be available to the mediator either in the room in a co-worker, or via a consultant."

"The mediator must have practical knowledge of the 1980 Hague Convention, a working knowledge of the court process, and knowledge of other member States' laws, both domestic and in the implementation of the Hague Convention. Finally the mediator needs to have an understanding of the practical problems faced by the families involved."

"Specialised training concerning the 1980 Hague Convention gives the only guarantee that the mediation fits into the court proceedings. The parents will ask the mediators, will tell them what the lawyers have said etc."

"With this caveat - certainly one of the mediators should have this sort of background to be able to guide and assist the other and, if appropriate in the circumstances, the parties."

"At least one of the mediators must be a lawyer with a family law background. Clearly general family law questions (residence, contact and PSO) arise in the course of mediation."

Q5. Do you believe this type of mediation should be undertaken by a mediator with non-legal expertise in the field of international parental child abduction?

Yes 50% (3) No 50% (3)

"Knowledge and experience of the area of child abduction is essential - my view is that you do not need to be a mediator with a specialist family law background although there is need for that specialist legal expertise (in child abduction law) to be available to the mediator either in the room in a co-worker, or via a consultant."

"The mediator need not be a family lawyer but must have a good knowledge and understanding of the law, not to pass information on to parents but in order to keep the mediation within the realms of legal probabilities/possibilities."

"If mediation is to be undertaken by a mediator with non-legal expertise in the field of international parental child abduction, then the mediator must have practical knowledge of the 1980 Hague Convention, a working knowledge of the court process, and knowledge of other member States' laws, both domestic and in the implementation of the Hague Convention. The mediator should also have an understanding of the practical problems faced by the families involved. I would also like to add that for a mediator without legal expertise, they would need to complete a full training programme and work with a mediator who has knowledge of the Hague Convention."

"The mediation has to be absolutely parallel with the legal proceedings and I doubt that a mediator without legal knowledge will be able to guarantee this."

"Unless working alongside a mediator with such experience."

Q6. As a mediator do you believe that this type of case should always be co-mediated?

Yes 100% (6) No 0% (0)

"In cases of this nature mediation is very intense and is often highly volatile and complicated. Due to time restrictions there is also only 'one chance' and it is essential that co-mediation takes place under these circumstances."

"It is important to have two mediators as they have limited time to mediate. A high level of expertise is required and 'two heads are better than one' and we must remember that decisions made will affect that family's lives long term."

"The likelihood is always that the couple will be highly emotional. The atmosphere is normally potentially explosive. It is far easier for mediators to handle the situation when one of them concentrates on the emotions and the other on the pragmatics (the mediators can switch these roles to advantage)."

"Bi-professional and bi-gender. Mediation is a great help; bi-national or bi-cultural co-mediators are even better."

"I think the parties feel more comfortable with 2 mediators, preferably of different gender. Rightly or wrongly it gives them the opportunity to identify with one of them - there is less chance of the feeling that 'this mediator has taken against me'"

"Probably, given the degree of conflict and complexity, a co-working mediator pair, preferably mixed gender and with complimentary expertise, would find the task less onerous."

Q7. As a mediator do you believe that this type of case should be mediated by a single mediator?

Yes 17% (1) No 83% (5)

"The likelihood is always that the couple will be highly emotional. The atmosphere is normally potentially explosive. It is far easier for mediators to handle the situation when one of them concentrates on the emotions and the other on the pragmatics (the mediators can switch these roles to advantage)."

"Co-mediation in high conflict cases is always a great help and the co-mediators may give an example to the parents how to co-operate."

"Never. Not only for the reason set out above, but it is far too taxing and tiring for a sole mediator to continue to engage the parties over such long periods of time."

"Volatile situations often require each mediator to take one parent aside. Due to time restrictions mediators can deal with separate tasks following and during the drafting of a Memorandum of Understanding. Issues could be overlooked causing problems for families after a consent order has been established."

"It is important to have two mediators as they have limited time to mediate. A high level of expertise is required and 'two heads are better than one' and we must remember that decisions made will affect that family's lives long term."

"It could be as long as the mediators were very experienced as a mediator (in high conflict children issue disputes) and had the specialist contextual knowledge and experience of child abduction."

Q8. Why does this type of mediation have to be completed within a two day period?

"The limited timeframe of the court proceedings needs a concentrated mediation. Because of long distances to one of the parents, and with travel and accommodation, a short period is to be favoured. One night in between is necessary."

"Momentum and the progression to a mediated outcome can be lost if the sessions are spaced too far apart. The second session would be 'back to square one'."

"I would think a flexible approach responsive to the needs and requirements of the case should be adopted."

"The practicalities of the availability of the parents, and the restricted timeframe of the court proceedings, requires mediation to take place over a concentrated period of time."

So to ensure that the 1980 Hague proceedings are not delayed."

"This is not necessarily the case. Obviously it is sensible to deal with these questions promptly and within the court timetable, but it often takes longer for parties to come to terms with the new situation."

Q9. Are three 3-hour mediation sessions adequate for this type of mediation?

Yes 100% (4) No 0% (0)

"With three 3-hour sessions the mediation may come to an end or at least to a limited settlement. The short time frame and its demanded discipline may be a great help."

"It is generally apparent after the end of the second session of mediation whether or not it will be possible to reach a Memorandum of Understanding."

"If parents cannot reach an agreement within three 3-hour sessions then I believe that no agreement will be made by extending the number of sessions. You also have two experienced mediators and the costs would be too high."

"3 hours is just about as long as anyone can cope with, be they a party or a mediator. A session of up to 3 hours is quite sufficient."

"I doubt it could be accomplished in less time, probably longer could be needed. I would think a flexible approach responsive to the needs and requirements of the case should be adopted."

"I personally don't agree with the idea that sessions should last 3 hours. It is too long - parties and mediators will often be exhausted mentally unless a session can be concluded within 2 hours."

Q10. Given the above, has it been necessary to introduce a different mediation practice from normal family mediation?

Yes 83% (5) No 17% (1)

"Normal' mediation allows the parties to present their own agendas and to deal with issues as they arise, sometimes over weeks or months. Hague Convention cases cannot and will not wait."

"Cases of this nature tend to be high conflict with highly stressed parents awaiting court action. This, coupled with surrounding issues such as domestic violence, cultural differences, foreign jurisdictions, and intense time restrictions, leads to mediation without the ability to experiment with varied options."

"Even though the general practice remains the same, mediators do have to direct the parents by explaining the court process, legal terms, long term court procedures, the effects on the family/child, and also you have to bear in mind that limited time is available."

"The primary difference is the Convention context and timetable. These cases are probably no different in kind from high conflict disputes over children that are "normal". Another difference is the practicality of making contact arrangements realistic if the parties live in different countries."

"I don't accept that the practice in this project is fundamentally different. It simply requires parties to be more concentrated and be able to reach conclusions in a tighter timeframe."

"I recommend a good preparation, telephone calls or e-mails in advance and to open the possibility for a follow up after the mediation by telephone or e-mail or video or with another mediator."

Q11. In your opinion, had those parents who participated in mediation been provided with sufficient background information on the workings of the 1980 Hague Convention and realistic prospects of the practicalities and/or court outcomes to enable them to make reasonable compromises within the mediation?

Yes 67% (4) No 16.5% (1) Yes and No 16.5% (1)

If no, what were the areas of concern?

"In some cases parents had applied for a return when really they would be happy with contact. In many cases it was necessary to discuss the court process, legal terms, long term court proceedings and possible outcomes. In a few cases parents understood the Hague process but still needed points clarified."

"Some parents had not spoken with their lawyer at all, some parents had inexperienced lawyers and were not aware that a defence under Article 13b or b was difficult to run and not seen a barrister."

"Mediators will not know exactly what advice the parties have been given by their lawyers. Clearly they have been told about the Convention but we will not know what spin (if any) has been applied."

"The **reunite** advice line does a wonderful job, I wish we had something similar in Germany. And the lawyers in London are specialised and generally better informed; we have to work on this."

Q12. Did parents participate in mediation with full knowledge of the options open to them following the final decision of the court under the provision of the 1980 Hague Convention?

Yes 75% (3) No 25% (1)

If no, what were the areas of concern?

"Most parents were not aware that issues of contact would need separate legal action and were not aware of the cost of this future litigation. Other parents were not aware of a possible future application for leave to remove and not aware of the potential cost or likelihood of success. Other parents were not aware of legal and welfare entitlements or the chances of child support being paid outside of the UK."

"I would like to point out that parents understood the range of options open to them but only because we (the mediators) explained the options and gave the parent an opportunity to ask questions as well as, where necessary, speak with their lawyer during the mediation process."

"Mediators will not know exactly what advice the parties have been given by their lawyers. Clearly they have been told about the Convention but we will not know what spin (if any) has been applied."

"In London yes, my experiences in similar cases in Germany are not so optimistic."

"I didn't know."

Q13. Did parents enter into mediation with any pre-conceived ideas about the outcome of mediation?

Yes 75% (3)

No 25% (1)

If yes, what were the preconceived ideas?

"Generally parents entered into mediation believing that they would get what they wanted. Several parents expressed surprise after the end of mediation that they had come to see things differently and the Memorandum of Understanding was not as expected at the onset of mediation."

"Parents clearly knew what they would like the outcome to be but due to the screening process they (or most) came with an open mind and all (or most) in the end worked together to try and come to an agreement."

"Parties do not arrive in mediation (in my experience) unless they are prepared to talk. Some will be intransigent - most will be prepared to listen (at some level) both to the other party and to the mediators."

"The Hague proceedings may be used as a tool to receive sustainable visiting rights."

"I cannot answer on the basis of the one case."

Q14. In the mediation cases what was the focus of the mediation?

"The court proceedings and how best they could, as parents, look at the best interests of the child; the child's best interests; contact; long term outcomes."

"The welfare of the child; practical contact for the non-resident parent in another jurisdiction."

"Where the child is to have his/her permanent home; the nature of the relationship between the absent parent and the child and the mechanics of facilitating that relationship."

"Seeing the child during the court proceedings; return of the child; how to organize the separated life after the return, including maintenance and property."

"Addressing the realities of contact for a father where both the Convention application and the mother's application thereafter to re-locate to the UK were both likely to succeed."

"The return of the child; contact."

Q15. Where there were allegations of domestic violence, did it hinder the mediation process?

Yes 25% (1) No 75% (3)

"Some were hindered in the first hour but in all cases this was resolved."

"In a small number of cases one parent was nervous about meeting the other parent (due to domestic violence) but once mediation commenced the parent felt safe and therefore was able to speak freely and unhindered regarding the best interests of the child."

"The model of mediation must take account of domestic abuse by building in proper pre-mediation screening and separate time throughout mediation with each party."

Q16. Were the services of an interpreter required in any mediation case?

Yes 50% (3) No 50% (3)

If yes, did this have an effect on the speed of the mediation process?

Yes 67% (2)

No 33% (1)

"We needed 3 full sessions in all cases where an interpreter was required."

"In one case the interpreter was extremely helpful (almost a third mediator)."

Q17. Where a Memorandum of Understanding (MOU) was agreed, did it cover more than the issue of return under the 1980 Hague Convention?

Yes 100% (4)

No 0% (0)

If yes, what other areas were covered by the MOU?

"Contact; child support; sharing of responsibilities; travel arrangement; exchange of information regarding the child's education."

"Return; travel; living in the home separately; bringing and returning the child to Kindergarten; maintenance for the child and mother; dividing property; continuing mediation at the domestic place."

"Contact; financial arrangements for flights etc."

"Contact."

Q18. Do you have any further feedback that you would like to be taken into account when the next stage of the Mediation Pilot is considered?

"A pool of mediators should be established to undertake mediation in these cases (this type of mediation should not be open to all legal mediators solely because they are lawyers) and all members of the pool should receive specialist training."

"No, save to emphasise the importance in these cases of co-mediation and the desirability of offering mediators of opposite sexes."

"Because of my experience in similar cases (German-Polish/German-US/German-UK) here in Berlin, I favour the co-mediation with a bi-cultural (bi-national) setting, which is a great help for the success of such mediation."

COSTS

Having undertaken mediation in 28 cases, it is not possible to provide an 'average' cost per case as there were too many variables across the 28 cases which would potentially distort any suggested 'average' cost. For example, in some cases the applicant parent paid for their flight to the UK as they had already purchased a ticket, or they did not require overnight accommodation as they chose to stay with family or friends; in 13 cases mediation was undertaken in London where there were venue costs and increased costs for mediators' travel and overnight accommodation; in 13 cases mediation was undertaken at **reunite's** premises resulting in no venue cost and reduced costs for mediators' travel and overnight accommodation; in 2 cases mediation was undertaken by telephone with minimal associated costs; the use of an interpreter was required in only 5 of the 28 cases.

The costs below are therefore based on mediation being undertaken in London, with the use of an interpreter, and with 'typical' costs for the applicant and defendant parents.

Mediators' Costs

Fees	£700
Travel Expenses & Subsistence	£230
Hotel Accommodation	£200

Applicant Parent Costs

Travel to the UK	£150
Hotel Accommodation	£180
Subsistence and travel in the UK	£120

Defendant Parent Costs

Hotel Accommodation	£90
Travel	£75

Administration/Interpreter/Premises

Venue Hire	£300
Administrative Staff	£150
Stationery/Postage/Telephone Calls	£45
Interpreter Fees	£400

	=====
TOTAL COST FOR ONE MEDIATION CASE	£2,640

KEY FINDINGS

The feedback received from those who participated in the Mediation Pilot Scheme provided a wealth of information and insight, not only to assist in identifying whether or not the mediation model was effective and workable in practice, but also to enable us to assess whether parents themselves would be willing to embrace the use of mediation as a means of resolving these high conflict disputes in the best interests of their children.

Based on the feedback outlined previously within this report, a summary of the key findings are below:

- After participating in the Mediation Pilot Scheme, 95% of parents would recommend mediation to others.
- 86% of parents were either highly satisfied or satisfied with the outcome of mediation.
- It is crucial that any mediator undertaking mediation in this type of case has expertise in the field of international parental child abduction and the 1980 Hague Convention, although it is not necessary to have a specialist family law background.
- Due to the complexity of this type of case, it is necessary to introduce a different mediation practice to that of 'normal' family mediation.
- Mediation in cases of international parental child abduction should always be co-mediated.
- From the parents' perspective, it is not necessary to mediate with mediators of mixed gender, the key requirement is the expertise, professionalism and neutrality of the mediators.
- In the majority of cases, participating in mediation does not delay the final hearing under the 1980 Hague Convention.
- It is crucial to undertake an initial screening interview with parents, prior to undertaking mediation, not only to ensure that the case is suitable for mediation, but also to ensure that parents understand the purpose of mediation and that any concerns relevant to mediation can be discussed.
- Offering three 3-hour sessions of mediation is usually sufficient in these high conflict cases.

- Allegations of domestic violence do not preclude entering the mediation process and do not affect the ability to reach a Memorandum of Understanding. However, it is important that a risk assessment is undertaken on each case and appropriate measures introduced to ensure that parents feel safe during the mediation process.
- Where the use of an interpreter is necessary it does not hinder the mediation process and does not affect the ability to reach a Memorandum of Understanding within the allocated timeframe.
- It is not necessary to have formal agreements with Central Authorities to take forward mediation, but it is important that Central Authorities support mediation and that courts, solicitors and Central Authorities promote mediation as an option.
- It is imperative to have an efficient administration system in place to manage the process from start to finish, and co-ordinate international travel in a limited timeframe, so to ensure the mediation does not hinder the court proceedings under the Hague Convention.
- Where it is appropriate for the voice of the child to be heard within the proceedings, it is essential that the agency undertaking the interview with the child provides the mediators with a copy of the report so that this can be taken into consideration within the mediation process.
- The cost to **reunite** of mediating in a case which included venue charges and the use of an interpreter was £2,640.
- A solicitor representing an applicant parent on average allocated 3.25 hours to the client in support of the mediation process.
- A solicitor representing a defendant parent, on average allocated 3.2 hours to the client in support of the mediation process.

CONCLUSIONS

This project set out to determine whether there is a place for mediation in cases of international parental child abduction and whether it can provide a realistic, practical alternative to the court process whilst, at the same time, working in legal conformity with the principles of the 1980 Hague Convention.

When considering the 28 cases which progressed to a concluded mediation, the overwhelming response is that there is a clear role for mediation in resolving these highly contentious and emotional disputes, and that parents are willing to embrace the use of mediation. In the words of one parent:

“It avoids a courtroom battle, which in this type of situation only gets you to a no win situation.”

Whilst it would be true to say that mediation would not be appropriate, or suitable, in every case, and that mediation cannot resolve all cases where it is attempted, it is a facility that should be offered in all cases of international parental child abduction.

When mediation was undertaken, three quarters of parents (75%) were able to agree a Memorandum of Understanding focused on the best interests of their child, ensuring that the child continued to have a positive relationship with both parents and their extended family, thus avoiding a court enforced decision and future litigation.

Even in those cases where it was not possible to agree a Memorandum of Understanding, parents reported that mediation assisted in reducing the conflict and was helpful in improving communication, and in some cases the parents continued to work together and eventually arrived at their own agreement.

Prior to commencing this project, **reunite** was acutely aware of the obstacles that the project had to address in developing the **reunite** mediation model and a number of key lessons have been learned.

One key lesson is that it is essential that only those mediators with specialist knowledge of international parental child abduction and the 1980 Hague Convention should mediate in cases such as these. It is also essential that these high conflict cases should only be mediated in a co-mediation setting.

It was interesting to note that the majority of parents did not consider that it was necessary to have mediators of different gender; they looked beyond the issue of gender and placed more emphasis on the level of expertise, professionalism and neutrality.

One of the challenges was to develop a mediation structure that would fit in practically with the procedural structure of an English Hague Convention case and would fall in line with the statutory objective of a final hearing within a 6-week period. The administrative system put in place was sufficiently robust to ensure that, in the main, mediation was undertaken and concluded within this 6-week period and did not delay the Hague process. In the handful of cases where mediation was not concluded within the 6-week period, this period of delay was acceptable to the parents and their solicitors, and agreed by the court on the basis that the case was suitable for mediation. We therefore feel justifiably confident in reporting that mediation does not delay the Hague process in any substantial way.

The mediation model was based on offering mediation over 2-days, comprising three 3-hour sessions, a model that is contrary to 'normal' family mediation. When undertaking mediation, this allocation of time proved to be highly successful as it encouraged parents to be more concentrated and be able to reach conclusions in a tighter timeframe. However, this was only possible because mediation was undertaken in a co-mediation setting and administrative support was available to source information such as school holiday schedules, flight costings etc, which ensured that the mediation continued to flow and assisted when drawing up the Memorandum of Understanding.

The Memorandum of Understanding was carefully drafted so to ensure that the child continued to have a positive relationship with both parents, and extended family, and avoid future conflict or further litigation. It therefore covered matters such as where, and with whom, the child would live, long term contact schedules for the non-resident parent, educational arrangements, health matters, and financial support for the child. It is essential that any Memorandum Of Understanding is workable dependent upon each individual case and the geographical and financial position of the family as a whole.

To complete the mediation process, it is essential that the Memorandum of Understanding is made into a consent order and placed before the court and, where necessary and appropriate, be registered with the foreign jurisdiction so to protect both parents and, more importantly, the interests of the child.

The **reunite** Mediation Pilot Scheme has proved to be highly successful in the development of mediation in cases of international parental child abduction. This **reunite** mediation model should be the template for other Member States of the 1980 Hague Convention to ensure uniformity in the approach to the use of mediation in these cases, and in order to create an international network of specialist mediators trained in the **reunite** model.

It is clear from this project that mediating in these cases will assist in reducing the cost to public funds of the Hague Convention proceedings, and the cost of proceedings in the other country. More importantly, mediation empowers parents to actively and purposefully address the issues affecting the future of their family.